

MINUTES OF THE REGULAR MEETING OF THE COUNCIL OF THE TOWN OF
WARRENTON HELD ON JANUARY 11, 2005

The regular meeting of the Council of the Town of Warrenton was held on January 11, 2005 in the Town Council Chambers.

Councilmembers present: George B. Fitch, Mayor, presiding; Councilmen David A. Norden, Birge S. Watkins, John V. Albertella, John E. Williams, Dennis M. Sutherland, Terrence L. Nyhous and John S. Lewis, Jr.

Also present: Kenneth L. McLawhon, Town Manager, Whitson Robinson, Town Attorney; and Evelyn J. Weimer, Town Recorder.

The Mayor called the meeting to order and invocation was given by Councilman John E. Williams.

CITIZENS TIME.

There were no citizens wishing to speak.

The Mayor noted that the public hearing request had been withdrawn by the applicant on the Special Use Permit #04-09. An application to establish a professional office in an existing dwelling in the R-10 Residential District for the practice of law.

PUBLIC HEARINGS.

Appeal of the Architectural Review Board decision regarding Application No. 04-43; Application to Replace Shutters at 19 Winchester Street by J. D. Eicher, agent of owner.

Mr. Watkins noted that he would recuse himself from participation in the request.

The Mayor opened the public hearing at 7:03 p.m. and Mr. Andrew Hushour, Community Development Planner, stated that the application was a retroactive application in that the shutters were already placed on the building. He indicated that the Planning Department had sent a notice to the property owner to obtain a Certificate of Appropriateness from the Architecture Review Board and the owner had appeared before the ARB on November 3, 2004. Mr. Hushour further stated that the ARB denied the request on the basis that the materials were inappropriate. He quoted from the Guidelines for Repair and Maintenance which specified that when important materials or features are significantly deteriorated and they cannot be repaired, that they be replaced with new or reconditioned elements of the same design and material. Mr. Hushour stated that the original shutters were wooden yet they were replaced with a PVC synthetic material.

Mayor Fitch called upon the applicant or applicant's representative.

Mr. Daniel O'Connell.

Mr. O'Connell noted that Mr. Jim Eicher, contractor on the building was present to address Council. Mr. Eicher addressed Council noting that he had remodeled Ms. Arrington's building and he

had replaced a number of wooden shutters which had a life span of only five to eight years with the new shutter.

Mr. Eicher circulated photographs of buildings within two blocks adjacent to Ms. Arrington's building showing shutters on the buildings. Mr. O'Connell asked Mr. Eicher how it came about that the shutters were replaced without review by the Architectural Review Board and Mr. Eicher stated that he thought review was not necessary. He understood that if signage or a roof was replaced ARB review was necessary but was not aware that just repairing or painting a building, review was required.

Mr. Williams asked why Mr. Eicher did not know about review by the ARB for the shutters. Mr. Eicher stated he had never seen any criteria of what should be reviewed by the ARB and that pre-painted metal roofing had been in the newspapers and he knew signs required approval.

Mr. O'Connell asked in what other areas the shutters had been approved and Mr. Eicher responded they had been used in Charleston, South Carolina and the historic districts of Richmond and Annapolis.

Mr. O'Connell stated that this was an opportunity to give some flexibility to what is perceived by members of the Architectural Review Board as their regulations. He understood that the decision was based on the National Park Service saying if the original material is available, the material must be replaced with the original material. He stated it was not in the Historic District ordinance, but a matter of interpretation. He quoted from Section 22-4.1, that "where there is no substantial change in design or material," and noted that the shutter's appearance was that of wood and was the same weight as wood. He felt that if property owners in the historic district were to be encouraged to maintain their property, they must be given flexibility or some incentive. He commented that if the material proposed will last longer than the original material but virtually indistinguishable, what harm was done to the Historic District. He suggested that this case be used as an example for granting some flexibility to the ARB.

The Mayor called for those citizens to speak for or against the application. There being no citizens wishing to speak, the public hearing was closed at 7:15 p.m.

Mr. Nyhous moved that the Council support the Architectural Review Board decision and Mr. Albertella seconded the motion. On a vote of 5-1, (for: Norden, Albertella, Sutherland, Nyhous, Lewis; against: Williams) with one abstention (Watkins), the motion passed.

Mr. Lewis stated that the shutters look good, however, the Council is charged with dealing with the ordinances as they currently exist and that the Council should support the ARB's decision unless it is felt that the product is in conformance with the ordinances.

Mr. Norden pointed out that the houses currently under construction on Winchester Street and Lee Street have installed wooden shutters. He felt it may be something that the ARB should look at in the new ordinance.

Mr. Albertella questioned what the applicant was to do now. He feared that an option was for the building to remain shutterless. He requested clarification that appropriate shutters be installed. Mr. O'Connell stated that that was not part of the Council review. The Town Attorney noted that that was not an issue before Council.

Vacation/Abandonment of Solgrove Road: A fifty (50) foot right-of-way beginning at the entrance to Solgrove Road at the intersection with Broadview Avenue/U. S. Route 17 and proceeding north and west from the Route 17 right-of-way line 255.59 feet (N84 17'00"W) to a line coincident with the westerly boundary of Lot 8 of Crestview Estates Subdivision. The subject property contains 12,780 square feet or 0.293 acres of land.

The Mayor opened the public hearing at 7:20 p.m. and called upon the Planning Director to present his report.

Mr. Mothersead stated that the request was from Mr. Tom Winfrey who owns property at the corner of Broadview Avenue/Route 17 and Solgrove Road, for abandonment of a part of the roadway which makes up Solgrove Road. Mr. Mothersead stated that Solgrove Road is a part of the subdivision and an entry to it is from Route 17 but the road was never improved, primarily because the neighbors were not interested in seeing it as an entrance off of a main highway. He further stated that a site plan had been submitted for the commercially zoned property at the corner of Solgrove Road and Route 17 and the site plan was approved allowing for development of approximately a half acre.

He stated that the Public Works Director had reviewed the area and that the current request was consistent with what was heard before and included only a very small portion of Solgrove Road. Mr. Mothersead noted that in 1999 there was a Board of Road Viewers appointed and they recommended abandoning the property. He described the area to be considered for abandonment noting that 50% of the property would go to the property owner on the north side, Ms. Lenore Plissner, 30% would go to Mr. Winfrey and the remaining 15-20% would go to Rachel Cartwright. He indicated all property owners have been notified and in the past there had been a cost associated with the property and the costs allocated.

Mr. Nyhous asked what Council's next step would be and Mr. McLawhon stated that the Town Attorney had distributed a document concerning the Board of Viewers.

Mr. Tom Winfrey.

Mr. Winfrey stated that he withdrew the earlier application when the adjacent property owner did not object to the abandonment of the road but objected to moving the building closer to the right of way. Mr. Winfrey noted that he was erecting a building on the property and without the abandonment he would be building an offset and he would like to square the building with an encroachment of about ten feet into Solgrove Road. Mr. Winfrey noted that he was about to break ground and could not wait the three months to commence construction.

He stated that when he considered requesting vacation again, he noted he would only do so if Town staff supported it. He indicated that he wrote a letter in April 2004 requesting vacation and the matter was just being considered.

The Mayor asked if it is a three-month process and the Manager noted that it was not; that the appropriate mechanism was to appoint the viewers and commence the process. Mr. Mothersead stated that the Foster Street vacation process took five months and the Manager underscored that that process did not have a Board of Viewers. In that case the staff was asked to prepare calculations and help set the asking price, etc. Mr. Winfrey noted that he could post a bond if the Town would be more

comfortable with it. The Town Attorney stated that he would not recommend that Council get into having a loose and hap-hazard way of pursuing things and that the Virginia Code Section 15.2-206, detailed the method of vacating a road. He advised that the Town be consistent and follow the Virginia statutes.

Mr. Winfrey asked how long it would take to follow the State statute and the Town Attorney responded that he did not know but that things would move faster than if left to an arbitrary standard.

Mr. Winfrey questioned if there would be any merit in the fact that 95% of the process had been accomplished before. Mr. Robinson stated he did not know what had occurred but he knew what happened with the Foster Street abandonment process and he would not want that to happen to Mr. Winfrey.

The Mayor stated that the process could be it is advertised, three people are to be selected for the Board of Viewers, they meet and with staff's background and input, they could come out of one meeting and indicate a fair market value, with a vote at the next Council meeting.

Mr. Williams asked about the 1999 citizens and asked if they were void in this case. The Manager stated that they were not in opposition but he was not sure whether any were in attendance and would be voicing opposition. He noted they could be voicing their opinions since the public hearing was not closed.

Mr. Winfrey asked if the only issue was the consideration and the Manager responded that the Code section indicated a report in writing of any inconvenience which should be generated by the "Board of Viewers".

The Town Attorney noted that all property owners in the area had been notified and the public hearing was being held.

Mr. Winfrey indicated that he would be requesting permission to build eight to ten feet into the right of way and the Town Attorney noted that that would be a Board of Zoning Appeals issue. The Manager indicated that the applicant had been told that process would also require a public hearing.

Mr. Williams asked Mr. Winfrey if he heard correctly in that he was not being helped by what he was getting from the Council tonight and Mr. Winfrey responded that he had all approvals and was ready to get the building started. He noted that once he got the foundation in, he could not change the footprint.

Mr. Norden asked if there should be another advertisement to put the Board of Viewers together. The Town Attorney stated that the Code section indicated that "at the conclusion of the hearing upon application of any person, the governing body could appoint three to five people to view such public right of way and report in writing any inconvenience that would result in discontinuing the right of way."

The Mayor asked for those to speak for or against the application.

Ms. Lenore Plissner.

Ms. Plissner stated that those in the neighborhood adjacent to the property received notice of the public hearing on December 30 and they had not had any time to discuss the issue and see if there is any opposition. Ms. Plissner stated that she purchased the property adjacent to Mr. Winfrey's property in June 2003 and it would be helpful for her to talk with Mr. Winfrey. She noted that she would not have any opposition to Mr. Winfrey having an extension of the few feet he was requesting but she was concerned about the access onto her property. She expressed concern about whether there could be a visible barrier or hedge installed. She requested postponement for a month to allow the neighborhood to meet.

Mr. John Reigen.

Mr. Reigen, resident of Solgrove Road, noted that he had no objection to abandonment of the road but would like to have the pedestrian access that is currently there retained. He was also in favor of a hedge to deter vehicular traffic.

The Mayor stated that those interests could be addressed through the appointment of the Board of Viewers. He suggested that Council appoint the three-person board.

Mr. John Mayhugh.

Mr. Mayhugh, resident of 587 Foxcroft Road which is also a corner lot on Solgrove Road, and owner of 540 Solgrove Road, noted his property was adjacent to Mrs. Plissner's. He noted he was not opposed to the closing or abandonment of Solgrove Road. He felt an appropriate physical or signage barrier was necessary so that the public would stop at the 255 feet and not exit Mr. Winfrey's parking lot and turn left onto Solgrove Road as a shortcut to the eastern bypass.

Mr. Winfrey stated that he would install a barrier. He noted that he had an approved site plan and his approved site plan was being involved in the abandonment of a road. Mr. Mothersead stated that the site plan was approved and Mr. Winfrey was welcome to execute it and if the road is abandoned, the only way he could take advantage of that was to amend the site plan for the additional footage needed to square off the building, which could be done at any time during the construction process.

Mr. Nyhous stated that assuming there are no problems if a Board of Viewers is appointed and the subject could be addressed in February and asked Mr. Winfrey if that would be the flexibility he needed.

Mr. Winfrey stated that he had promised a tenant and had a deadline that he could not currently meet and time was critical.

Mr. Lewis felt that the key is appointing the correct three people who have time to devote and do not have to go through a learning curve. He suggested former Councilmember Sam Tarr.

Mr. Williams recommended Per Bang-Jensen who had worked with the earlier request for abandonment.

On a motion by Mr. Williams, seconded by Mr. Lewis, Council agreed to appoint a board of viewers for the Solgrove Road abandonment on a vote of 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis).

On a motion by Mr. Nyhous, seconded by Mr. Norden, Council voted 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis) to appoint Sam Tarr, Per Bang-Jensen and John Kip to the board of viewers.

CONSENT AGENDA.

- a. Approval of the Council minutes of the joint meeting with the Planning Commission, Architectural Review Board and Board of Zoning Appeals held on November 17, 2004 and regular meeting held on December 7, 2004.
- b. Financial statement and staff reports and Board and Commission minutes.
 - (1) Financial statement for period ending December 31, 2004.
 - (2) December statement of accounts paid.
 - (3) Miscellaneous staff reports.
- c. Minutes of the October 20, 2004 meeting of the Planning Commission.
- d. Consideration of resolution adding streets into the Town Street System.

On a motion by Mr. Williams, seconded by Mr. Nyhous, the Consent Agenda was approved on a vote of 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis).

Special Use Permit #04-09. An application to establish a professional office in an existing dwelling in the R-10 Residential District for the practice of law. The permit would allow for limited use of the property as a law office with up to three (3) non-resident employees. The property is located at 469 Devon Drive in the Brookshire Manor Subdivision off of Culpeper Street (PIN 6984-20-6189). The Comp Plan identifies the area as Low Density Residential consistent with current development. The property is owned by Frederick H. Kruck, Jr.

On a motion by Mr. Watkins, seconded by Mr. Lewis, the Council voted 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis) to withdraw the noted public hearing at the request of the applicant.

UNFINISHED BUSINESS.

Consideration of recommendation of appointment of members to the Planning Commission and Architectural Review Board.

It was noted that the item would be discussed following the Closed Session.

REPORTS AND COMMUNICATIONS.

Report from Town Attorney.

Mr. Robinson noted that he had nothing to report.

Report from the Finance Committee.

Mr. Watkins, Chairman, noted that he would like to schedule a committee meeting prior to the next Recreation Committee meeting.

Report from the Police Committee.

Mr. Lewis, Chairman, noted there was no report.

Report from the Public Information Committee.

Mr. Albertella, Chairman, noted that the committee had met and were in the process of adopting a methodology for construction of an e-mail database and waiting on an opinion from the Town Attorney. He indicated that the next meeting would be planned in February and the January meeting was a productive meeting with the website construction firm and committee members would be submitting suggestions for improvements to the Town website in attempting to improve the flow of information from Town government to the citizens.

Report from the Public Works Committee.

Mr. Lewis, Chairman, noted that there was no report.

Report from the Utilities Committee.

Mr. Nyhous, Chairman, stated that the Committee will meet on November 18 and there would be discussion of the rate study and a Fauquier County representative would give a presentation on the reservoir overlay ordinance.

Report from the Airport Committee.

Mr. Lewis, representative to the Committee, noted that Fauquier Airport was one of the closest airports in the district just outside the perimeter of extraordinary security and the government had been visiting the airport. He noted that airport improvements would be fast tracked to include two new runways.

Report from Planning District 9 Representative.

Mr. Albertella noted there was no report.

Report from the Transportation Safety Commission.

Mr. Watkins stated that he had given a report at the January 6 worksession and there would be a proposal at the February meeting to recommend improvements on the bypass for transportation efficiency, safety, business viability and aesthetics.

Report from the Economic Development Advisory Committee.

Mr. Williams stated a meeting was planned for the third Thursday and the Committee would be accepting some tasking from the Transportation Safety Commission.

Report from the Recreation Committee.

Mr. Sutherland noted that Grimm & Parker architects would be giving a presentation before the Board of Supervisors on Thursday, January 13 at 3:30 p.m.

The Mayor noted that the Grimm & Parker contract had been finalized and they are preparing the engineering design work. He asked when it would be completed. The Manager stated that he would talk with the architects on Thursday and he thought there were some design related elements on the leisure pool that the governing body and others wanted to further explore.

Report from the Joint Communications Board Representative.

Mr. Albertella noted there was no report.

Report from Liaison Committee Representative.

There was no report.

Report from the Parking Committee.

Mr. Lewis stated that there was no report and another meeting would be scheduled soon.

Report from the Town Manager.

Mr. McLawhon reported that the Memorandum of Understanding had been received from the Rappahannock Regional Commission (PD-9) regarding the Route 211 corridor project and the Town would contribute \$1,000 and the County will contribute \$1,500 toward the study.

COUNCILMEMBER'S TIME.

Mr. Watkins noted that the Virginia Planning Association is hosting their annual meeting at Airlie April 27 through 29 and there was a local host committee which he is serving on. He stated one of the ideas is to show them planning activities around the Town and planning successes.

Mr. Norden indicated he was not sure what had been established regarding the public hearing process for the Fire Department's proposal and whether it was going to be a joint hearing or a separate hearing, even if it took two separate hearings to accomplish it.

Mr. McLawhon noted that there was a meeting on January 19 where it is slated to have the matter discussed, in terms of the details, the remaining items that could not be addressed at the prior meeting, the completeness of the application and some of the information that was missing.

Mr. Anthon noted that he was not aware that they were slated to be at the Planning Commission meeting on that date but they did have an appointment with Mr. Mothersead.

Mr. McLawhon stated that he had heard that the application was incomplete, the concern as to whether there would be a joint meeting or back to back meetings. He noted that the date would be in the near future presuming that the application on the 19th is progressing, the market documentation, a number of the odds and ends that are needed to get an okay on, was part of the consideration. Mr. McLawhon asked if there was anything he was overlooking. Mr. Norden suggested that if the applicant would not know about the establishment of a public hearing at Planning Commission until after their January 19 meeting, depending on advertisement requirements, it may be the February Council timeframe for the public hearing. Mr. Norden stated that the advertisement could occur prior to the February 19th meeting. He suggested that the Planning Commission meeting occur about a week prior to the Council meeting and then the public hearing before Council could be scheduled for the February Council meeting.

Mr. Nyhous asked the deadline for the application.

Mr. Will Eicher stated that the deadline is March 11, 2005. It was determined that a special Planning Commission meeting would be held followed by a public hearing before the Council with some time in between to work out any matters that arise.

Mr. Tom Middleton.

Mr. Middleton, resident of Broadview Avenue, came forward and asked Council help to uphold the Town's ordinances concerning litter. He stated he has two neighbors who have junk all over their property. Mr. Middleton stated that Mr. Andrew Hushour, of the Town's Planning Department, had Town crews clean up the property on another occasion and recently sent the property owner another notice to clean the property.

Mayor Fitch asked if there was junk that would be a threat to health and safety. Mr. Middleton noted that there could possibly be. Mr. Albertella stated that it was an example of the necessity to strengthen the Town's ordinances.

Mr. Hushour stated two notices that had been mailed, one in April and one in May, and there had been compliance. He stated that the letter that was mailed in December was not a violation in the Code and asked the property owner to be mindful of the Town staff routinely looking at it and if it gets out of control again, he will be receiving the final notice.

Mr. Watkins asked what the notice says and Mr. Hushour stated it asks for compliance with the Town ordinances within ten days.

Mr. Albertella asked if the matter could be brought into compliance under the current Code and Mr. Hushour stated that he was confident that it could taken through the process.

Mr. Williams asked what the penalty was and Mr. Robinson stated that it would go to the Town Attorney for handling if there was not compliance.

Mr. Middleton noted that there was a car on the property without proper decals. The Manager stated that the Chief of Police would look into the matter.

Mr. Middleton stated he was also concerned about the speed limit in the area and Mr. Watkins noted that the Transportation Safety Commission had recommended lowering the speed to 35 miles per hour.

CLOSED SESSION - Section 2.2-3711(A) Section 2.2-3711(A) (1) – for the purpose of discussing personnel issues, Section 2.2-3711(A) (7) - for the purpose of a discussion with Town Attorney regarding litigation and Section 2.2-3711(A) (3) – for the purpose of discussion on acquisition/disposition of real property.

On a motion by Mr. Lewis, seconded by Mr. Norden, and a Council vote of 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis), the general session was adjourned and the closed session convened.

On a motion by Mr. Lewis, seconded by Mr. Norden, Council voted 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis), the closed general session was reconvened. PROPER CERTIFICATION IS FILED.

Mr. Nyhous moved that Ms. Elizabeth Scullin, Ms. Susan Helander and Mr. John Harre be reappointed to a four year term, expiring December 31, 2008, on the Planning Commission and Mr. Norden seconded the motion. On a vote of 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis) the motion was approved.

On a motion by Mr. Sutherland, seconded by Mr. Norden, Council appointed Mr. Mark DiGiulian to fill an unexpired term (expiring December 31, 2005) on the Architectural Review Board on a vote of 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis).

There being no further business, the meeting adjourned at 9:10 p.m.

Evelyn J. Weimer, Town Recorder